IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

TIMOTHY HANEY §

v. § CIVIL ACTION NO. 6:13cv514

DIRECTOR, TDCJ-CID

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Petitioner Timothy Haney, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of prison disciplinary action taken against him during his confinement in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Haney was convicted of the disciplinary offense of assaulting an officer with a clear liquid substance. He complains that his counsel substitute provided ineffective assistance, the conviction was obtained through the use of perjured evidence from the charging officer, and he was not allowed access to the audio tape or pertinent documents to prepare his appeal.

As punishment for the disciplinary case, Haney received a mandatory one-year minimum stay in medium custody, a reduction in classification status, 45 days of cell and commissary restrictions, 15 days of solitary confinement, and the loss of 180 days of good time. Haney acknowledges that he is not eligible for release on mandatory supervision.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed, concluding that the punishments imposed upon Haney did not implicate any constitutionally protected liberty interests and that Haney therefore had no basis for habeas corpus relief. *Sandin v. Conner*, 115 S.Ct. 2293, 2300-01 (1995).

In his objections, Haney asserts that he is in fact stating a denial of a constitutionally protected liberty interest, but he fails to identify any such interest. He complains that the charging officer's allegations were not supported by "tangible evidence," but the Fifth Circuit has held that the charging officer's testimony alone is sufficient to support a finding of guilt. *Hudson v. Johnson*, 242 F.3d 534, 537 (5th Cir. 2001). He refers to the district court's decision in *Malchi v. Thaler*, 211 F.3d 953, 956 (5th Cir. 2000), saying the ruling in his case should be the same, but overlooks the fact that the district court's decision was reversed by the Fifth Circuit. Haney's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in the cause, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge (docket no. 21) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Timothy Haney is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 11th day of March, 2015.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE